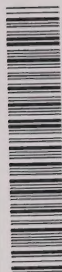


CAI
TA 190
- 1985
16

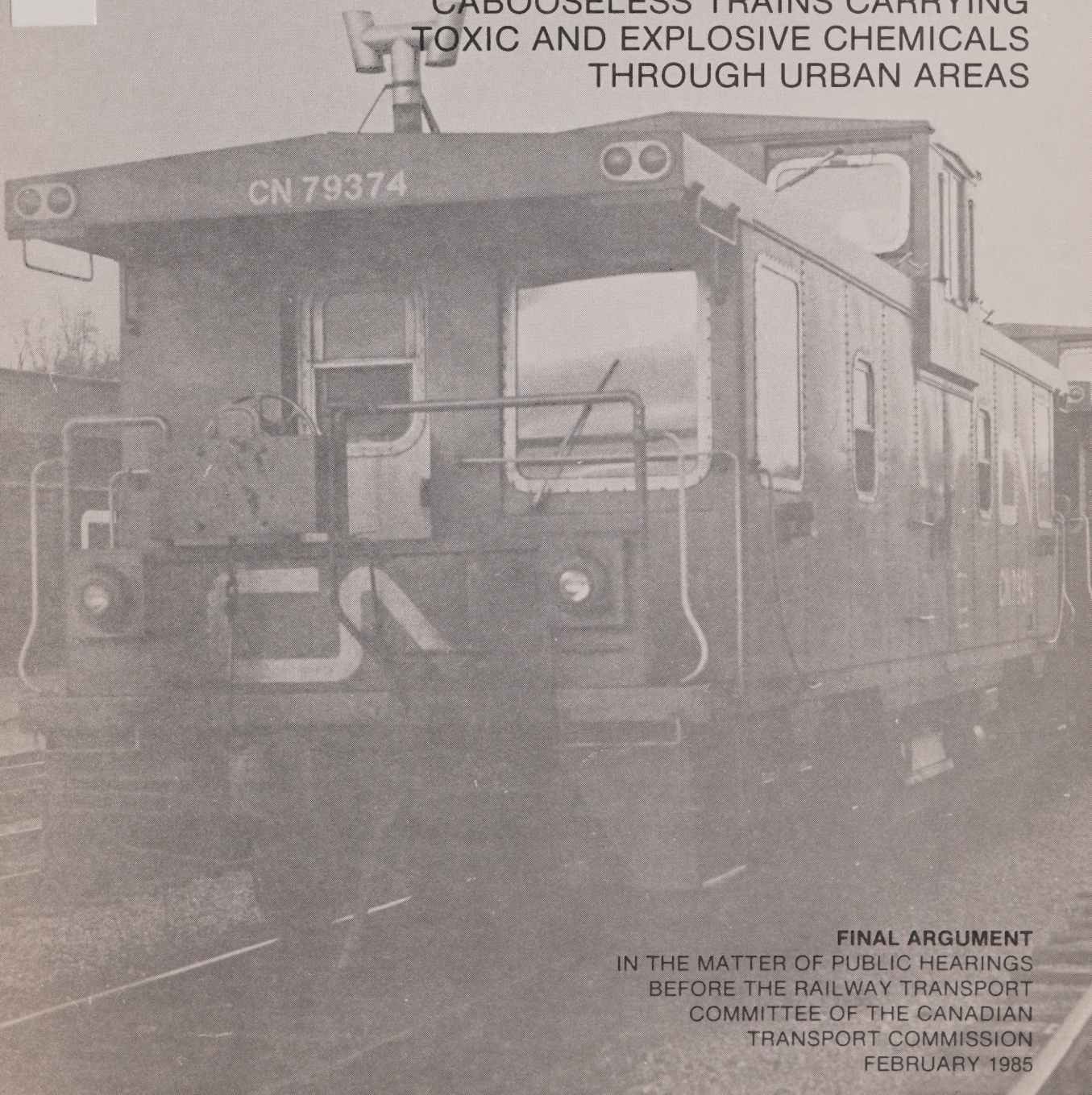


3 1761 11635960 5

M-TRAC

for rail safety

**DANGER TO THE PUBLIC
IN THE OPERATION OF
CABOOSELESS TRAINS CARRYING
TOXIC AND EXPLOSIVE CHEMICALS
THROUGH URBAN AREAS**



FINAL ARGUMENT
IN THE MATTER OF PUBLIC HEARINGS
BEFORE THE RAILWAY TRANSPORT
COMMITTEE OF THE CANADIAN
TRANSPORT COMMISSION
FEBRUARY 1985

AXF 4285

M-TRAC

for rail safety

METRO TORONTO RESIDENTS' ACTION COMMITTEE

181 University Avenue, Suite 1802, Toronto, Ontario, M5H 3M7

Telex 065-24481

Phone (416) 365-0301

February 12, 1985

Hon. Don Mazankowski PC
Minister of Transport
Place de Ville
OTTAWA

Dear Mr. Mazankowski:

In the matter of a plan to test cabooseless
trains--Railway Transport Committee public
hearings

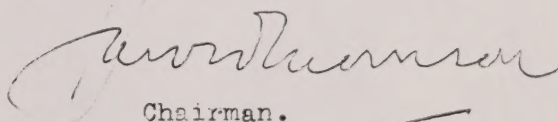
This matter has provoked widespread anxiety, centring on the plan that would include cabooseless trains carrying increasing loads of toxic and explosive chemicals through built-up areas across the country.

Our Final Argument is enclosed. We submit that this issue, which has raised so much controversy, should be resolved by examining the full merits of the case before deciding whether tests, involving the removal of the rear-end trainman, should be allowed.

We submit, further, that no urgency in the matter has been proven. In contrast, evidence of failures of existing equipment has been startling and requires full investigation.

It would appear most prudent to continue testing of the End-of-Train Unit with the caboose in place, and a federal inspector in the cab, while the full merits of the railways' application are explored.

Yours sincerely,


Chairman.

cc: Members of Cabinet
Members of Parliament
Ontario Legislature
Mayors and Municipalities of
Metropolitan Toronto
Directors and Technical Advisers
Interested Parties

M-TRAC
for test safety

THE UNIVERSITY OF TORONTO LIBRARY
1285 UNIVERSITY AVE. TORONTO, ONT. M5S 1A5

February 12, 1977

Dr. J. H. ...
...
...

Dear Sir,

I am writing to you in regard to the ...
...
...

The ...
...
...

The ...
...
...

I am ...
...
...

I am ...
...
...




Yours sincerely,

[Handwritten signature]
...

...
...
...





Digitized by the Internet Archive
in 2024 with funding from
University of Toronto

<https://archive.org/details/31761116359605>

"At issue is the need for visual inspection and while the caboose may be termed by some redundant, the requirement of a rear trainman is not. Technology cannot take the place of human judgment and instant decision."

— Brian Mulroney, Leader of the
Progressive Conservative Party,
August 21, 1984.

THE RAILWAY STRATEGY

"To avoid having the crew consist issue become an immediate safety issue with the RTC, the first step is to get RTC approval of the rules changes needed to permit removal of cabooses. A later step will be to negotiate a reduction in crew size with the United Transportation Union."

— G. A. Swanson, CP Rail, General Manager,
Eastern Region, memorandum dated
March 22, 1984, and filed
into evidence January 16, 1985.

THE CONTROVERSIAL "CABOOSELESS TRAINS TEST PLAN" LATER KNOWN AS CP-2 CIRCULATED FOR COMMENT ON OCTOBER 24, 1984. BY THE SECRETARY OF THE RAILWAY TRANSPORT COMMITTEE. EXCERPT FROM PAGE 2493 OF THE TRANSCRIPT, RTC PUBLIC HEARING, VANCOUVER, B.C., JANUARY 15, 1985:

Mr. Morrison: Do I take it, Mr. Chairman, that this CP-2 document is completely irrelevant to the decisions of the RTC in this matter of the safety of testing the cabooseless trains?

The Chairman: It's not relevant at all to the decision that we're going to make in the case, except that it is evidence that CPR has submitted as to their views as to how cabooseless trains should be tested. That's all it means to me.

"I don't know of larger trains running anywhere in the world that are running in Canada. I think the loadings that we're putting on these systems are horrendous, and the people in the industry know it..."

I think the trains today potentially are much more dangerous, both to the operators and to the general public, than they were 40 years ago...

The whole check and balance that evolved over a very long period of time has gradually broken down, and there are some valid reasons why that's taken place...

The bottom line, if I might use that term, is that these trains simply are not subjected to the same degree of scrutiny that they once were. Indeed, the statistics would indicate that even the condition of the equipment--and for those of us who work in the operation, who see the broken angle cocks, who see the frozen pins and the couplings that don't work, that see the piston and the brake shoes or no brake shoes at all, who see the hand brakes that don't work, we're not surprised, nor indeed I suppose with the Canadian Transport Commission, now that they've done their inspection on these, to see these very high percentages. They're alarming."

— Alderman John Cooper of Victoria, B.C.,
CP Rail conductor and chairman of
citizens' group, giving evidence
before the RTC at Vancouver,
January 14, 1985.

TABLE OF CONTENTS

I	Anxiety Spreads	1
II	The Regulator's Responsibility	7
III	A Defective Document	13
IV	The Course to Follow	20
V	The American Experience	27
VI	Summary	31

I ANXIETY SPREADS

Seldom in our recent history have we witnessed such an outpouring of anxiety and apprehension. From one end of the country to the other the evidence has accumulated that cabooseless operations, under existing technology, are premature and dangerous. It is not just a question of union employees who may lose their jobs. It is a widespread expression of deep and widely-held apprehension that removal of the rear-end trainman will not only make the engineman's job more difficult but will reduce existing levels of public safety and escalate the risks of a major catastrophe.

As we have learned from the Federal Minister of Transport, the Railway Transport Committee originally planned only one hearing site, at Hull, Quebec, on the issue of whether to test cabooseless operations, based on the development of the End of Train Unit.

The Minister said he stepped in and encouraged the Railway Transport Committee, through the Canadian Transport Commission, to hold hearings across the country.

We have studied the documentation and we have heard some of the critical comment from the witness stand. It appears that the RTC was in a rush to push ahead with cabooseless testing. What motivated this rush? Why was it so important last June to get a cabooseless test plan together within 30 days? What catastrophe would befall the railways if the test did not take place at once?

The railways argue that they need to save money in order to make the system more efficient. And since the United States has already started some cabooseless operations, the U.S. railways might take over some of the Canadian markets if the Canadian railways do not compete vigorously. The Canadian railways had tested the End of Train Unit with the caboose in place and found that this 30-pound mechanical device functioned successfully.

We have this assurance from the railways. Mind you, there was no independent observer in the locomotive cab when the tests took place but that may be a fault of the RTC staff rather than the railways. It was the RTC staff that decided it would be logistically unfeasible to put someone into that cab to watch the tests. Railway management and union witnesses have stated in evidence that they would have welcomed an RTC inspector to observe the tests. None was provided.

So it would seem the first step the RTC should take is to have the tests continued and verified — not only in warm summer weather but in cold winter weather, when temperatures drop dramatically, to see how well that ETU works and if the battery malfunctions.

That would be a basic sensible approach to this complex issue that has aroused so much emotion and so much conflict across the country. And while those tests go on, let us examine the merits of the case, the fundamental reasons why it may be necessary to go cabooseless and whether the competition from the American railways is real and overwhelming. With due respect, the railways have not proven their case simply because the facts have not been examined and will not be examined until Phase II of this public hearing takes place.

In that sense, the cart has been put before the horse. We don't know that there is any real need to go cabooselless and yet the RTC has stated it will only hear evidence at this stage whether it is safe to test. It is our understanding that to test, the safety rules under the Unified Code of Operating Rules must be modified, particularly Rule 90A which states there must always be a trained person at the rear of the train.

Lifting the rules would simply absolve the railways from existing liability and in our view increase public and employee risks. As for the railways' statement that it does not plan to fire the rear-end trainman but simply place him in the locomotive cab — along with the engineman and the brakeman — where he can better control the operations of his train, this is mostly a masquerade. The representatives of the enginemen have given the RTC a warning that increasing the number of people in the cab may add to stress and distraction. The trains, including those hauling dangerous goods through built-up areas, have grown very long and very heavy. The engineman would like to have the ETU display as an added device in the cab but he would also want the trainman at the rear of the train. In fact if it came down to a narrow decision, he would prefer the comfort of having a rear-end trainman who performs safety functions which the ETU cannot perform.

Let us look carefully at that statement by the Rt. Hon. Brian Mulroney, written while he was Leader of the Opposition last year. "At issue," says Mr. Mulroney, "is the need for visual inspection and while the caboose may be termed by some redundant, the requirement of a rear trainman is not. Technology cannot take the place of human judgment and instant decision."

The emphasis, as we see it, is on “human judgment and instant decision”. Technology must be encouraged and to the extent that the ETU can provide an additional safeguard at very little expense, it should be welcomed and the Canadian manufacturers congratulated. If the battery proves to be a weakness, perhaps there are ways of overcoming that weakness. We cannot discard technology simply to keep men employed since the result may be loss of competition. But before we start throwing men out of their jobs, let us prove that the technology works and that it will really lead to increased efficiency without adding to public risk.

So we have to go back to the railways' assurances that they don't intend to fire the conductors — simply move them to the cab. And we say: why would you want to do that? The move is suspect and it does not add public confidence in other railway assurances.

Why would you want to move the conductor from the back of a mile-and-a-half train where he can act instantaneously in the event of an emergency to the front end? We think the answer has been supplied by that very curious memorandum by Mr. Swanson, the CP General Manager, that the real purpose of removing the caboose is to fire the conductor — once the safety rules are modified. That will be where the real money will be saved. And you will note that Mr. Swanson doesn't express any concern about public safety.

Very recently, just after the RTC ended the current hearings at Winnipeg, we were called in by the Toronto educational authorities to provide advice on locating new schools in relation to dangerous goods traffic. We were dismayed to find that the Toronto authorities have already started school drills to evacuate children in schools near the track in the event of a

chemical spill. The plain fact, we learned, is that these authorities — some of them very highly trained people from Europe — have very little confidence in existing rail safety measures in the Toronto area.

In their view it is just a matter of time before Toronto faces a serious derailment problem, of the kind near South Bend, Indiana, where a Canadian-owned 112 tank car leaked deadly anhydrous hydrogen fluoride, raising a poisonous cloud that required immediate evacuation. That happened earlier in February.

We state, and the emergency response forces support us, that the existing level of public safety in the haulage of dangerous goods traffic through built-up area is inadequate. It must be improved. And you do not improve it by removing safety rules and using a relatively new mechanical device in the place of a rear-end trainman who can watch for sparks and fires, smell poisonous leaks, protect the public at level crossings, watch for shifted loads and loose chains, track washouts; can speed up train operations by handling manual switch replacements from the rear of the train; keep the caboose handy for a first-aid station; provide warnings for oncoming trains in the event of a stall or derailment; keep an eye on passing trains on double tracks and be ready to direct the train in the event of necessary reversals.

As Mr. Mulroney stated: "Technology cannot take the place of human judgment and instant decision." It may be true that some rail employees may be lax in their jobs. The railways have power to discipline them and the unions should encourage such discipline. There is no room in our competitive world for sloppy work, or neglect through indifference. The man at the rear of the train has a major job to perform and he must be in condition to perform it to the best of his ability. We are sure all Parties of Record will agree with that attitude.

Perhaps the most important role for the rear-end trainman is to be able to apply the brakes in the event of an emergency. The ETU cannot do this. The railways have provided assurances that a prototype of a new device will be provided shortly that will allow the engineman to apply the brakes from the rear of the train. The prototype was supposed to be completed in the first quarter of 1985. But we are told by the manufacturer that is not the case. It is still under development and if all goes well, the device may be ready for market in 1986. But at this time the product is no more than a matter of speculation. We don't really know how well it may perform, or whether it will perform at all.

To run caboosseless trains under such circumstances would seem to be not in keeping with The Canadian Transport Commissioner's responsibilities.

II THE REGULATOR'S RESPONSIBILITY

Thirteen years ago, on April 19, 1972, the Railway Transport Committee issued its initial report on a rail safety inquiry in which it said:

"Among the duties imposed upon it by the Railway Act and the National Transportation Act, the Railway Transport Committee has the obligation of ensuring that all railway operations in Canada are carried out in maximum safety."

Two words stand out: **MAXIMUM SAFETY**. The obligation of the RTC is to provide maximum safety not only for the railway employees but for the general public which may be at risk as a result of certain rail operations.

The question that arises from this inquiry would seem to centre on this point: Would the operation of cabooseless trains in Canada provide maximum safety, or, conversely, would the removal of the rear-end trainman damage maximum safety for employees and the public?

We submit that the vast portion of the mountainous evidence placed before the RTC raises grave doubt that maximum safety will be maintained. It is more evident that maximum safety would be jeopardized; that the level of public risk would be intensified.

The railways base their case mainly on the development of the End of Train Unit which somehow has grown more elaborately in name to the End of Train Information Service. This suggests some very impressive gadgetry at the end of the train which makes the rear-end trainman obsolete. That is not the case.

And the railways claim that the ETIS, combined with other devices already in place, including the hot box detectors and advanced communications, would ensure that the existing level of safety would not be compromised. Indeed, we have even heard that the level of safety would be improved.

But as we delve deeper into this matter we find that the railways' claims are challenged. Documentation which we have never seen before has been produced by the bushel, detailing hot box detectors that don't work, radios that don't work, sloppy marshalling of dangerous-goods cars, flat cars appearing on the consist with loose chains and loose logs, disappearing placards, failed signalling equipment, kinks and blocks in the air hose, bad sanitary conditions in the cabs and many incidents that might have resulted in serious accidents but for the presence of the rear-end conductor.

These are not trivialities. They bear investigation. The railways are the lifeblood of Canada. They must operate efficiently but with their growing loads of toxic and explosive chemicals they must operate safely. The RTC says they must operate at *maximum safety*. And we submit there is an obligation by the RTC to apply the principle of maximum safety on the question of cabooseless testing.

Now we are sure the railways will say that maximum safety is open to interpretation. Maximum, in the physical sense, means the very best or the greatest available. Probably the railways will say: the very best affordable. You can put more armour on tank cars but that will increase the weight and increase the energy needed to pull the cars. You can slow the speeds of these dangerous goods cars but that, say the railways, will add to costs and delay deliveries.

Of course the railways whistle a different tune on cabooseless trains. There is very convincing evidence that cabooseless trains will cause delays but the railways don't seem to be worried. What if the front-end conductor takes 20 or 30 minutes to reach the back of his train during a snowstorm? What if there is delay in resetting manual switches, requiring the front-end trainman to walk back and then to the front again? What if it takes more time to replace an 85-pound knuckle towards the rear of the train? And what about the physical condition of the trainman hanging on the side of the last tank car or box car during a winter reversal?

There is every indication that cabooseless trains will encounter delays, especially if maximum safety is to be maintained. But then, again, what is maximum safety and is it more than affordable safety? On several occasions CN Rail counsel quoted from the RTC 1981 Show Cause Decision on risk and safety, specifically:

"The prudent course is one which balances the benefits of net safety improvement against the costs necessary to achieve the improvement, taking into account the public perception of what level of over-all risk is acceptable."

Even that statement is open to interpretation. What is public perception and what is acceptable risk? Visions of cabooseless trains running through congested population centres carrying heavy loads of dangerous products arouse great fear. That fear is widely held.

Evidence has mounted before this inquiry confirming that widely-held fear and general concern. Even the government of Saskatchewan, which supports cabooseless testing on nonregulated cargo, strongly opposes

testing with dangerous cargo. It is quite clear that cautious handling of dangerous cargoes comes under the category of maximum safety, even to the point where the railways may say it is not affordable safety. Mr. Justice Samuel Grange, in his report on the 1979 Mississauga derailment, stated that there are times when subsidies may become necessary in order that safety be maintained.

But the reference to net safety improvement in the 1981 RTC Show Cause Decision does not mean a balancing of existing safety against costs but the cost of achieving an increased level of safety over that which already exists. It is the improvement that may require a balancing of costs. And, of course, to protect the public we submit that if the improvement is really essential and can be proven to be so, the cost does not become the ultimate barrier, merely another factor to be considered and weighed in the implementation of the safety improvement.

In the case of caboosless testing, there is no indication and certainly no proof that removal of the rear-end trainman would improve safety. On the contrary we see a deterioration and it is so perceived by many of the witnesses who have appeared in this inquiry.

And what is the trade-off for the public? Virtually nothing except that the railways may make a little more money and the goods may arrive a little later than usual. If you say to the man on the street: Look, I'll cut the price of your bread by one cent a loaf if you'll agree to accept the risk that your local school may blow up, we are certain the answer will be--keep your penny and protect the school.

And on that very point of potential damage, we again refer to the 1981 RTC Show Cause Decision which states:

"The cost of damages and of disruptions in railway operations may be reduced by safety measures and these cost savings can reduce the economic significance of capital investments for safety improvement."

Safety can pay for itself. That is a logical and reasonable conclusion. And it is not unreasonable to conclude as well that maximum safety can bring maximum benefits.

The RTC has other responsibilities under the law and one is to maintain the economic viability of the railways. There is little point undertaking measures that will lead to railway bankruptcy. And if the railways can prove that denial in operating cabooseless trains will bring dire economic problems to our railways, that matter must be given serious consideration.

But, again, that deals with the merits of the case and we say the merits have not been given scrutiny in this inquiry but have been set aside for Phase II. It would appear more important than ever that Phase II be ushered in immediately so that the merits can be tested.

That would be the only fair way of dealing with the case. We see nothing in the law that forces the RTC to render an immediate decision on cabooseless testing or cabooseless operations. And since, officially, the RTC has not yet received an informed opinion independently on the operation of trains with the ETU at the end of the caboose, it would appear prudent to proceed in that direction and obtain the necessary statistics while Phase II progresses.

Finally, in weighing the RTC's responsibilities to the general public and its responsibilities to the railways, there may come a time when the question of priority comes up. On this point we bow to Mr. Justice Grange who, in a well-turned comment, stated: "The railways are answerable to their shareholders; the RTC is answerable to the public."

And further: "A long, fast train is a profitable one; it is not necessarily a safe one. I accept, of course, that in the course of natural justice one does not normally make an order affecting another's rights or pocket book without giving that other a chance to be heard. But there may come a time, where the safety of the citizen is concerned, when the onus shifts. In such case the burden of proof may (perhaps should) fall upon him who creates the risk."

Who, in fact, would create the risk if the RTC should decide, despite all the opposition voiced in these hearings, that the safety rules should be lifted and cabooseless testing undertaken?

The railways could very well make a case that the RTC instituted that risk. You will recall the concern over liability voiced by Commissioner Dubé before he terminated his association with this inquiry. The safety rules were introduced at a time when most freight trains were far shorter and carried less hazardous goods than they do now. To remove the rear-end trainman for some undefined economic reason, for some unsubstantiated dire economic need, when, in fact, the trains are growing longer, heavier and transport increasing loads of toxic and explosive chemicals, would, in our view, be irresponsible.

III A DEFECTIVE DOCUMENT

The proposal to eliminate the caboose and remove the rear-end trainman has aroused such confusion, anxiety and alarm the like of which has not been seen in this country for some years.

Rail workers are, of course, concerned about their jobs. But they are equally concerned, and most sincerely, about the problems of maintaining public safety. Many municipalities across the country have expressed their concern and pleaded with the RTC not to escalate public risks. They have been joined by representatives of firefighters and other emergency response forces. Documentary proof has been piled up before the RTC dealing with deficiencies and failures in rail safety equipment, including hot box detectors and radio communications; failures in proper labelling of dangerous cargoes and the marshalling of dangerous tank cargoes on the wrong trains.

Some of these problems may be associated with employee error and others with bad management. The major concern of the RTC at this juncture is how the reported problems relate to the proposal to test cabooseless trains. A point of concern must be that removal of the rear-end trainman would, at the very least, remove one existing safeguard providing some measure of protection in a long, fast train carrying huge loads of dangerous products.

How, you may ask, did testing on dangerous-goods trains ever get considered in the first place? We have an extensive history in North America where dangerous-goods derailments have caused very heavy suffering. Over and over again, we receive assurances from rail industry people that we need not be alarmed for the future. Improvements have eliminated many of the old risks. But then we find some of these assurances are no more founded in fact than the familiar barks of the pitchmen at the community circus.

Most people are familiar with the Mississauga derailment and understand the concern of Metropolitan Toronto. We have the RTC Burton-Post Report warning that the potential for catastrophe still exists in that area. Nothing had been done. We've had an explosion in the MacMillan Yard just a year ago, partly due to indifferent handling of a dangerous tank car mislabelled as EMPTY.

Many people know about these events but perhaps not many know of the major accidents that have occurred in the United States, which has a questionable rail safety record. Remember the Livingston, La., derailment just two years ago which destroyed 19 buildings, set fires burning for 13 days, forced evacuation of Livingston for 14 days and caused many millions of dollars in damage. Tons upon tons of contaminated soil had to be removed from that area before it could be judged fit for people to inhabit.

We cite these cases, not because of their direct relationship to the caboose and the rear-end trainman, but because they relate to the transport of dangerous goods by rail. If the RTC has grasped to its heart a policy of maximum safety, here is where the policy should endure.

But what do we find? In the course of the RTC's deliberations of the rail application for cabooseless operations a plan emerges to test cabooseless operations not only on ordinary or non-regulated cargo but trains carrying toxic and explosive chemicals, and not only through the countryside but through cities and towns. What would be the purpose of such testing? What vital information could the railways possibly accumulate through such adventure that could not be accumulated by testing as far away from congested areas as possible and on trains not carrying dangerous cargoes?

The recommendation for such vast and indiscriminate testing came through a Technical Group, constituted and authorized by the Railway Transport Committee. The RTC virtually instructed parties of the Technical Group to meet and come up with a test plan. In fact the evidence shows that there appeared to be an unseemly rush to get the test plan organized and brought before the RTC for approval as quickly as possible. Why there was such a rush we don't understand. There seemed to be no crisis facing the Canadian railways at that time; certainly no crisis to warrant immediate action to test cabooseless trains, without testing the preliminary response of the Canadian public from one end of the country to the other.

The recommendations for widespread testing were contained in the document, filed as CP-2, and entitled "Cabooseless Trains Test Plan." It was filed by CP Rail as part of the company's evidence and endorsed by CN Rail. The document, circulated for public comment by the Secretary of the Railway Transport Committee, contains no names of the Technical Group parties, other than the Recording Secretary, R.G. Beckert, a senior RTC economist.

We know now, although the document when circulated did not say so, that the Chairman of that Technical Group was another senior RTC officer, Mr. John Green. And we know that the members of the Technical Group were representatives of the two major railways and the two major unions involved, the Brotherhood of Locomotive Engineers and the United Transportation Union.

This information, concerning the membership and their deliberations, was contained in Minutes of the Technical Group available at the offices of the RTC in Hull, Quebec, but not circulated by the Secretary of the Railway Transport Committee when he distributed the "Cabooseless Trains Test Plan" on October 24, 1984. No mention of such Minutes was made in the "Cabooseless Trains Test Plan" document, nor was the document conditioned or stated to be founded on any other document. As it was received and read in our offices and in other offices, the document indicated that the Technical Group, with its unidentified members, had reached a decision to recommend cabooseless testing on dangerous commodity traffic as well as ordinary or unregulated traffic, and in urban as well as rural areas.

In fact, during the early course of this public hearing the railways' witnesses repeatedly referred to a consensus within the Technical Group on the recommendations, although the representative of the United Transportation Union did not remain in the Technical Group to participate in the recommendations.

No mention of the UTU walkout was made in the "Cabooseless Trains Test Plan." The document merely stated:

"A plan has now been developed by the Technical Group with the parameters for the test operation of experimental trains without cabooses."

Having learned after receiving the document that the Technical Group had included representatives of the two major unions as well as the two railways and the RTC staff, we wrongly concluded that there had been a true consensus. As it turned out, nothing could be further from the truth. There had been no consensus. The UTU representative walked out shortly after the second meeting of the Technical Group began and did not return. As we heard from the witness box during the course of this public inquiry, the representative of the Brotherhood of Locomotive Engineers took a hands-off attitude and the document known as the "Cabooseless Trains Test Plan" was flatly repudiated by the B.L.E. leadership.

The consensus, if there was such a thing, could only have included the RTC officer and the two railways. The Technical Group, as originally constituted, was in tatters. And since the RTC officer involved was not in the witness box, we cannot be sure to what extent he supported the testing of cabooseless trains carrying dangerous goods through urban areas, or the basis of his support, if such was the case.

No wonder the UTU research director called the document "worthless". It was more than worthless. It was deficient and misleading. And to the extent that officers of the RTC staff may have been involved in the document's construction, these officers must be open to very serious criticism.

Now, the Chairman of this public hearing has made clear that this document "Cabooseless Trains Test Plan" has not been accepted by the RTC and it is not relevant to the decision that may be reached in this case, except as CP evidence of how CP views the proposed testing. The Chairman of this public hearing states that this is not an RTC document and the RTC has no responsibility for it.

The document itself states that after the pre-hearing conference of June 4, 1984, "the Railway Transport Committee (RTC) expressed the thought that some experience with cabooseless train operations would be desirable before the Commission is called upon to make a decision on the railways' application now before it."

The railways' application does not request mere testing but amendments to the Uniform Code of Operating Rules which would allow full operation of freight trains without cabooses and without a rear-end trainman. Railway witnesses have stated in this public hearing that the proposal to introduce cabooseless testing came from the RTC staff. Mr. Reoch of CN Rail stated at Page 666 of the transcript: "I think it should be stated that the source of that particular proposal was, as stated, with RTC."

Indeed, throughout this public hearing the railways have linked the RTC with both the Technical Group and the document that emerged. We understand, of course, that what the RTC staff may undertake and decide have no legal bearing on the RTC Commissioners, whose authority is drawn from Parliament. The law rests in the hands of the Commissioners, not the RTC staff, but it may be reasonable to conclude that the staff does not act without instruction from the Commissioners.

In the public mind there has been much confusion, and intensification of anxiety, in wrongly concluding that what may be in the mind of the RTC staff does not necessarily reflect what is in the mind of the RTC Commissioners.

As an example of this confusion, the Corporation of the Borough of East York received a letter dated November 26, 1984, from J. E. Drew, CN Rail Superintendent of the Central Ontario Division, in which Mr. Drew stated:

"The Commission has formed a technical working committee to set the terms and conditions of these tests. The technical committee is chaired by the Railway Transport Committee of the CTC and includes representatives of both railways as well as the Brotherhood of Locomotive Engineers representing locomotive engineers and the United Transportation Union representing conductors and brakemen."

Now Mr. Drew is a responsible person and what he conveys to the Borough of East York is that the Railway Transport Committee, as such, chaired that Technical Group. If such a knowledgeable person as Mr. Drew does not know the difference between the RTC and RTC staff, how can other parties affected by what ensues be able to tell the difference? It would seem beneficial that the RTC instruct the RTC staff that in disseminating material to the general public, full explanations should be made available to prevent confusion.

This would seem to be most important, especially in such a serious proposal as this: to eliminate the rear-end trainman.

IV THE COURSE TO FOLLOW

One of the baffling points in this inquiry is whether the Railway Transport Committee has already indicated a preference to test cabooseless trains even before this public inquiry began.

If we follow the wording of CP-2, the document entitled "Cabooseless Trains Test Plan", you will see that the Railway Transport Committee "expressed the thought that some experience with cabooseless train operations would be desirable." As stated, that testing would precede the RTC's decision on the railways' application for general cabooseless operations.

That was in June 1984, just two months after the railways filed their application to remove existing safety rules and allow general operations without cabooses. In fact, as we know, a Technical Group was quickly formed and it seems that the RTC Executive Director virtually instructed the members to come up with a test plan in 30 days.

As events developed, the RTC decided in August 1984 that the public hearing process should apply initially to the test program itself. That decision was taken after a public outcry against the prospect of possible premature RTC action to lift safety rules and begin some cabooseless operations to see what happens.

The initial plan thereafter was to hold public hearings in Ottawa-Hull only, as the Federal Minister of Transport has informed the City of Toronto. But the Minister stated that he intervened and as a result hearings were scheduled in Moncton, Winnipeg and Vancouver as well as in Hull.

But despite the multitude of voices against the testing of cabooseless trains, there still lingers the question whether the RTC is somehow committed to "some" testing, as CP-2 would imply, and the only question to be settled here is how this testing is to be carried out and what limits should be placed on this testing.

We, of course, argue that the RTC is not committed. The expression that "some experience with cabooseless train operations would be desirable" is not an outright commitment, though it may be interpreted as an expression of preference.

Indeed, to undertake cabooseless operations without exploring all the safety risks involved and without hearing the views of the representatives of the people placed at risk would not be in keeping with a position of national trust. The people of this country have a right to look to the Railway Transport Committee of the Canadian Transport Commission for protection in the operation of the Canadian rail system — even to the extent of **maximum safety**.

Further, in exploring the RTC expression that some experience with cabooseless operations would be desirable implies a priority of the physical experience over the central issue of economic need. What need is there in Canada to operate cabooseless trains, other than the obvious railways argument that some money may be saved?

We are not certain at this stage what exact sums will be saved simply because this portion of the public inquiry has been curtailed. The RTC has ruled that it will only hear evidence at this stage on the safety issue. Economic considerations are to be examined at a later stage, after the RTC decides whether to allow cabooseless testing and what limitations are to be placed on such testing.

With due respect, we have to state that if the RTC has in fact expressed a desire to gain experience with cabooseless testing, the value of these hearings — despite the huge outcry voiced against such testing — may be diminished. The worrisome factor is that the RTC may prefer to test and of course the decision rests with the RTC.

We have raised the argument that in considering this proposed serious abrogation of longstanding safety rules, the first step should be to study the merits of the case, specifically the urgent need for such major change. If there is an economic need to make changes, then the first step would be to substantiate that need before going any further. What is the point of raising this agonizing threat to unleash cabooseless operations in Canada if the railways fail to substantiate urgent economic need?

Even on the very narrow issue of testing, we submit there has been no proof of urgent economic need. Why was the Executive Director of the RTC so demanding on the RTC Technical Group to come up with a test plan by mid-July 1984 when urgent economic need was not verified?

Even if we go behind the CP-2 document known as "Cabooseless Trains Test Plan" and examine the Minutes of the Technical Group which have been placed in evidence, we find no assurances that any deep

examination of the relevant safety factors took place. There was no indication that the Technical Group had sought out safety specialists from across the country for advice or even sought to gather independent statistics of the safety record of U.S. cabooseless operations.

The argument can be made that if interested parties were concerned, they should have appeared at the RTC pre-hearing conference in June 1984 to make their views heard. We maintain that argument puts the public at risk. If you don't show up, your interests won't matter. We cannot speak of all emergency response forces — though you have heard their opposition very clearly during this public hearing — but we can say, for our part, that we were fully occupied with the investigation of an EMPTY tank car explosion in the MacMillan Yard which disclosed some shocking deficiencies in the way our railways manage the handling of dangerous cargo.

And to find hundreds of pressurized tank cars carrying dangerous gases at twice the pressure of full loads and labelling these cargoes EMPTY does not lead to increased confidence in the railways' bland statements that they fully endorse safety as a first priority.

Whatever the excuse for interested parties not turning up at the pre-hearing conference, we assuredly must rest our case on the RTC's own acknowledgement that the Canadian rail system must operate under **maximum safety**.

And here we must refer to another ambiguity arising out of the manner in which the cabooseless test plan in CP-2 was devised. We have been very critical of this document, particularly the fact that it did not mention a serious breach inside that Technical Group which prepared the test plan, including the testing of cabooseless trains carrying dangerous goods through urban areas.

On Page 2493 of the transcript the Chairman of this public hearing dismissed the document as "not relevant at all to the decision that we're going to make in this case, except that it is evidence that CPR has submitted as to their views as to how cabooseless trains should be tested. That's all it means to me."

Yet on Page 3007, a day after the Brotherhood of Locomotive Engineers repudiated the document, the Chairman of this inquiry accused this intervenor of leading the witnesses and defended both the Technical Group and the document it produced.

The Chairman maintained: "There was an input from the unions on this. Had they fully participated in this exercise, I'm sure that document would have come out with a clear statement of their position in it. But the fact that they withdrew, there was no opportunity for that."

And later: "The UTU withdrew, and the BLE participated, and we heard evidence here yesterday that the BLE participated at a very low level; had very little concern about the matter at all.

"This Commission is attempting to provide input for all parties. It's here. We can't pull people in and demand that they participate. We can only give them the opportunity to participate and that's been done."

The clear facts, of course, are that the UTU withdrew from the Technical Group and gave warning that cabooseless testing would be dangerous. And to say that the BLE "had very little concern about the matter" contrasts with the testimony before the public hearing that the BLE is completely opposed to the cabooseless test plan.

And as for the manner in which the Technical Group was constituted and the participants selected, can we say it was anything more than a union-management bargaining table, rather than a safety forum? Who decided on this arrangement other than the RTC?

In 1982 the Science Council of Canada published a report entitled "Regulating the Regulators" in which it stated:

"When risk assessment is part of a policy process, the social, political and value assumptions underlying the evaluation of risk, and the trade-offs involved in making a decision must be stated and justified in light of the final decision. This information should be contained in a public record of the decision-making process."

That, we suggest, is sound advice. It is obvious to us that there is a trade-off involved in this issue, weighing the value of economic gain against the possibility of higher risk. But this trade-off cannot take place without union co-operation. To impose cabooseless testing without union co-operation will undoubtedly escalate the risk. We believe the "Cabooseless Trains Test Plan" document should have made clear that the safety issue had not been fully explored and that the unions were not prepared to participate.

That document was nothing more than a shoddy piece of obscurity; another piece of evidence of the shortcomings of our bureaucratic structure. We believe the manner in which the document was prepared was deliberate and designed to lead the public into believing that the union-management position on cabooseless testing was unified.

Nevertheless, the RTC is faced with a dilemma. If it is committed to a preference to some form of cabooseseless testing, we suggest that preference be carried out in the following manner: continue the testing of the End of Train Unit attached to the caboose with the rear-end trainman in place and with the addition of an RTC inspector in the locomotive cab.

While this goes on, introduce Phase II of the inquiry so that the economic need for cabooseseless operations can be examined. The results of that examination should decide whether in fact there is an urgent need for cabooseseless operations in Canada.

If there is no urgent need, nothing is lost. If there is an urgent need and it is clear from the inquiry forum that such an urgent need exists, Canada, of course, must make a decision — either the increased risk is accepted or the railways are compensated through Parliament. At that time, cabooseseless testing — that is, testing of freight trains without a caboose and rear-end trainman — must be confronted.

But even in that event it would be illogical and irresponsible to allow cabooseseless operations indiscriminately by lifting the safety rules in a manner that would unleash long trains of dangerous goods into congested public areas without the protection of a rear-end trainman.

Indeed, the question is still there: how can cabooseseless tests be undertaken, even in a limited manner, without modification of the safety rules? And if the rules are modified, does the onus of risk pass from the railways to the RTC? We believe the RTC has a responsibility in this matter which goes far beyond the “thought that some experience with cabooseseless train operations would be desirable.” It goes to the very heart of the RTC pledge to maintain **maximum safety**.

V THE AMERICAN EXPERIENCE

Toward the end of this phase of the hearing, CP Rail produced a panel of U.S. rail executives to testify to the American experience in cabooseless operations. That evidence was important since the Canadian railways base a good deal of argument on the threat of market competition from American lines which, because they are allowed to go cabooseless to some extent, can reduce costs and therefore offer traffic at lower rates.

We submit there is no convincing evidence that American railways are more efficient than Canadian because of cabooseless operations. In fact, we are surprised to learn that some American cabooseless trains operate with no less than five persons in the front locomotive cab, using the "black bag" for sanitation. Since most Canadian freight trains operate with only three men, how can the railways say that the U.S. lines are more cost efficient? In fact, if American lines continue to operate with five men in the front cab, Canadian railways should be able to take business away from the Americans.

As for accidents related to cabooseless operations, the American response is ambiguous. The representative of the Association of American Railroads, A.W. Johnston, acknowledged "there have been some accidents with cabooseless trains" but he suggested that none of these accidents could have been prevented had there been a caboos on the train.

Mr. Johnston, the AAR Vice-President for Operations and Maintenance, strangely did not have figures on the number of such accidents and he relied for his statement on a survey he recently made of the American railways operating cabooseless trains. The AAR is the central U.S. rail trade organization and you would think that it would have kept a very close watch on the cabooseless experience to gather every piece of information available on how the operations are carried out and whether they fully protect the public from what might possibly turn into a catastrophe.

So to have Mr. Johnston say that cabooseless accidents have occurred and then say that he did not have details, yet could add: "they were certainly not attributable to cabooseless trains" is not very convincing.

And why this very defensive statement: "they (the railways) had no accidents or incidents that would have been prevented had there been a caboose on the train." Who makes this statement? The management of U.S. railways protecting their decision to operate without a caboose. Is that statement verifiable? Perhaps, and perhaps not. The situation, as we have heard from the evidence, is very lax in the U.S.

No one really stops American railways if they decide to go cabooseless and get agreement with their unions. And while almost two dozen state legislatures found themselves with proposals to block cabooseless operations, the bills died partly because of the short seasonal

life of the legislatures and we have no doubt partly because of the pressures of railway owners. We are well aware of the powerful rail lobby in the United States and what it can accomplish. So while the rail executives blame the unions for provoking state legislature bills to block the caboosseless operations, we suggest the contrary may also be true — shipper and carrier lobbies exist and can be very effective.

Nevertheless, it would seem odd that this highly-placed group of American rail executives was not aware of that very serious accident that took place near Chicago just two days before delivering testimony. As related by Gerald Maloney, U.S. vice-president of the United Transportation Union (at page 3585 of the transcript), this caboosseless train derailed, including three tank cars carrying some 450,000 pounds of butylene, a very toxic chemical, and some 5,000 citizens at Lennox, Ill., had to be evacuated. Mr. Maloney estimated that had these tank cars exploded, they would have "devasted an area one mile in diameter." Again, that is his testimony. The railways may challenge it, or they may not. This derailment simply does not add confidence to American caboosseless operations nor does the statement of Mr. Johnston that if accidents have happened on caboosseless trains, they cannot be attributable to the fact that they were caboosseless.

We suggest that the United States is not an enviable leader in rail safety. We believe its record is horrendous. The statistics are available, as loose as they may be. The United States has a rail record which has perplexed the Railway Transport Committee. You will recall that in the 1981 Show Cause Decision the RTC, noting that Canadian railways had a far better safety record, was of two minds whether the Canadian record was even better than an impressive American record or simply better than a mediocre American record.

That is not to say that all American rail accident figures are suspect. We have high regard for some American lines who have been progressive in the installation of hot box detectors and have started to identify dangerous pressurized cars through colour coding, which we have not yet done in Canada.

It is a sort of laissez-faire system down there. We are certain many Canadian safety-related organizations would agree that Canada should think twice before emulating the low-control American process. And before we go any further, let us consider whether the legislature battle over the caboose is over in the United States. We do not believe it is.

VI SUMMARY

- In view of the huge and impressive opposition to cabooseless testing, the RTC should delay a decision on this issue until the merits have been fully examined.
- The railways have failed to prove any urgent need for cabooseless testing and Phase II of the public hearing should be initiated to examine the vital economic argument.
- If the RTC feels it is committed to a preference for cabooseless testing, this should be done with the rear-end trainman in place.
- Testing of cabooseless trains carrying toxic and explosive chemicals through built-up areas would be irresponsible.
- The voluminous evidence placed before the RTC of equipment failures, misplaced dangerous-goods cars, lack of placarding and lack of back-up dispatcher radios should receive urgent RTC attention.
- The document entitled "Cabooseless Trains Test Plan" (CP-2) should be dismissed as deficient and misleading.
- The remaining wreckage of the RTC Technical Group should be swept away and the membership dismissed. If necessary, a new Technical Committee should include representation from emergency response forces and other affected groups.

